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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
ORACLE AMERICA, INC., a Delaware
corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
SETH RAVIN, an individual,

Defendants.

CASE NO. 2:10-cv-0106-LRH-PAL

**OBJECTIONS PURSUANT TO FED. R.
CIV. P. 56(c)(2) TO EVIDENCE
SUBMITTED IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
ORACLE'S SECOND MOTION FOR
PARTIAL SUMMARY JUDGMENT**

1 Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation
 2 (collectively, “Oracle”) hereby submit objections to the following materials cited by Defendants
 3 (“Rimini”) in support of Rimini’s Opposition to Oracle’s Second Motion for Partial Summary
 4 Judgment, filed at Dkt. 436: (1) statements identified in response to Fact No. 88 in Rimini’s
 5 Statement of Facts In Support of Its Opposition to Oracle’s Second Motion for Partial Summary
 6 Judgment and Response to Oracle’s Alleged Facts, filed at Dkt. 437; and (2) certain documents
 7 originally filed in support of Rimini’s Opposition to Oracle’s First Motion For Partial Summary
 8 Judgment. The grounds for Oracle’s objections are identified below.

9 **I. RULE 37(C)(2) OBJECTION TO RIMINI’S RESPONSE TO ORACLE FACT 88**

10 In its opposition to Oracle’s second motion for partial summary judgment, Rimini
 11 attempts to expand the basis for its defamation claim to include new alleged defamatory
 12 statements that it failed to disclose in discovery. The Court should exclude these new alleged
 13 statements as a discovery sanction pursuant to Federal Rule of Civil Procedure 37(c)(2).

14 In an interrogatory, Oracle asked Rimini to identify “each false, defamatory, or
 15 disparaging statement” upon which it based its claim. Dkt. 421, Appendix of Exhibits Cited In
 16 Support of Oracle’s Second Motion for Partial Summary Judgment (Vol. III) [Filed Under Seal]
 17 (“Sealed Appendix of Exhibits”), Ex. 68 at 2. In its initial and supplemental responses, with
 18 respect to its allegation that Oracle Regional Services Sales Manager James McLeod published a
 19 defamatory statement, Rimini said only [REDACTED]

20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED] *Id.* at 3-4. Other than
 23 that [REDACTED], Rimini identified *no other statement* in Mr.

24 McLeod’s email. *Id.* Later, in an effort to moot this very motion since Rimini had taken no
 25 discovery on its counterclaims, Oracle wrote to Rimini asking it to dismiss those claims or
 26 identify the evidence upon which Rimini intended to rely. *See* Dkt. 413, Appendix of Exhibits
 27 Cited In Support of Oracle’s Second Motion for Partial Summary Judgment (Vol. III) (Public
 28 Version), Ex. 71. [REDACTED]

1 [REDACTED]. See Sealed Appendix of
 2 Exhibits (Dkt. 421), Ex. 72. At no time until it filed its opposition to this motion did Rimini seek
 3 to further update its interrogatory response to disclose any new alleged defamatory statements.
 4 Now, in its opposition, Rimini states for the first time that “[t]he false and defamatory statements
 5 in Mr. McLeod’s email were not limited solely to the quotes from Oracle’s complaint,” and
 6 identifies other alleged defamatory statements never before disclosed as a basis for its claim.
 7 Compare Sealed Appendix of Exhibits (Dkt. 421), Ex. 68 with Dkt. 437, Reply Statement Of
 8 Undisputed Facts In Support Of Oracle’s Second Motion For Partial Summary Judgment
 9 (“RSUF”) at Oracle Fact 88.

10 Federal Rule of Civil Procedure 26(e)(2) requires that litigants “timely” supplement all
 11 interrogatory responses if their prior responses are either incomplete or incorrect. Rule 37
 12 provides that if a party fails to do so, it cannot use previously-undisclosed information “to supply
 13 evidence on a motion . . . unless the failure was substantially justified or is harmless.”
 14 Fed.R.Civ.P. 37(c)(1). Absent a showing of substantial justification or harmlessness, the
 15 exclusion of the new information is “automatic and mandatory.” *Cambridge Elec. Corp. v. MGA*
 16 *Elec., Inc.*, 227 F.R.D. 313, 321 (C.D. Cal. 2004); see also *Yeti by Molly, Ltd. v. Deckers*
 17 *Outdoors Corp.*, 259 F.3d 1101, 1106-7 (9th Cir. 2001). Rimini does not and cannot make the
 18 requisite showing. “Learning of plaintiff’s liability theories only after they had filed their motion
 19 for summary judgment place[s] [Oracle] at a distinct disadvantage and constitute[s] unfair
 20 surprise.” *Cambridge*, 227 F.R.D. at 325. Thus, Rimini cannot now point to new statements to
 21 defeat summary judgment, and the Court should not consider any statement in Mr. McLeod’s
 22 email other the one identified in Rimini’s interrogatory response. See *id.* at 323-25; *Robinson v.*
 23 *Geithner*, 2011 WL 2143026, at *11 (E.D. Cal. May 31, 2011).

24 **II. OBJECTIONS TO PREVIOUSLY-SUBMITTED EVIDENCE**

25 Rimini’s opposition to Oracle’s second motion for partial summary judgment also relies
 26 on previously-filed documents: (1) the Declaration Of Brooks L. Hilliard In Support Of
 27 Rimini’s Opposition To Oracle’s [First] Motion For Partial Summary Judgment, filed at Dkt. 264
 28 and under seal; and (2) Exhibits 3, 11, 14, 15, 17, 19, and 24-28 (filed at Dkt. 261-62 and under

1 seal) to the first Declaration of Robert Reckers (Dkt. 260). *See* RSUF at Oracle Facts 32, 66 &
2 Rimini Facts 9-10, 22-23, 35, 41. Oracle asserted evidentiary objections to these documents
3 when they were first filed. *See* Dkt. 286 at 4, 23, 26. Oracle reasserts those same objections
4 here. Rather than repeating them in their entirety a second time, Oracle hereby incorporates its
5 previously-filed objections by reference, as though fully set forth herein.

6
7 Respectfully submitted,

8 DATED: October 26, 2012

BINGHAM MCCUTCHEN LLP

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11 By: /s/ Geoffrey M. Howard
12 Geoffrey M. Howard
13 Attorneys for Plaintiffs Oracle USA, Inc., Oracle
14 America, Inc. and Oracle International Corp.
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